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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 FRANCISCO MANZANO,

11 Petitioner,

12 v.

13 JAMES E. TILTON, Secretary of  
California Department of Corrections  
and Rehabilitation,

14 Respondent.  
15 \_\_\_\_\_

Civil No. 06cv2077 JAH(WMc)

ORDER ADOPTING THE  
MAGISTRATE JUDGE'S REPORT  
AND RECOMMENDATION AND  
DENYING PETITION FOR WRIT  
OF HABEAS CORPUS

[28 U.S.C. § 2254]

16 INTRODUCTION

17 Petitioner, a state prisoner proceeding *pro se*, filed a petition for writ of habeas  
18 corpus pursuant to 28 U.S.C. § 2254. The petition has been fully briefed by all parties  
19 and, pursuant to 28 U.S.C. § 636(b)(1), the Honorable William McCurine, Jr., United  
20 States Magistrate Judge, has submitted a report and an amended report and  
21 recommendation to this Court recommending the instant petition be denied. No  
22 objections to the amended report were submitted within the time allotted for submission  
23 of objections. After careful consideration of the pleadings and relevant exhibits submitted  
24 by the parties, and for the reasons set forth below, this Court **ADOPTS** the magistrate  
25 judge's report and amended report and **DENIES** the instant petition in its entirety.

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## DISCUSSION

### 1. Legal Standard

The district court's role in reviewing a magistrate judge's report and recommendation is set forth in 28 U.S.C. § 636(b)(1). Under this statute, the district court "shall make a *de novo* determination of those portions of the report . . . to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge]." *Id.* When no objections are filed, the Court may assume the correctness of the magistrate judge's findings of fact and decide the motion on the applicable law. Campbell v. United States Dist. Court, 501 F.2d 196, 206 (9th Cir. 1974); Johnson v. Nelson, 142 F. Supp. 2d 1215, 1217 (S.D. Cal. 2001). Under such circumstances, the Ninth Circuit has held that "a failure to file objections only relieves the trial court of its burden to give *de novo* review to factual findings; conclusions of law must still be reviewed *de novo*." Barilla v. Ervin, 886 F.2d 1514, 1518 (9th Cir. 1989) (citing Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983)).

### 2. Analysis

The Court received no objections to the amended report and no request for an extension of time in which to file any objections. As such, the Court assumes the correctness of the magistrate judge's factual findings and adopts them in full. The Court has conducted a *de novo* review, independently reviewing the report and all relevant papers submitted by both parties, and finds that the report provides a cogent analysis of the claim presented in the instant petition. Specifically, this Court agrees with the magistrate judge that petitioner's sentence was not grossly disproportionate to the crimes charged considering petitioner's long history of convictions on both violent and non-violent crimes and thus, the state court's affirmation of petitioner's conviction was neither contrary to, nor an unreasonable application of clearly established Supreme Court law. *See Williams v. Taylor*, 529 U.S. 362, 405-05 (2000); Lockyer v. Andrade, 538 U.S. 63, 73 (2003); Clark v. Murphy, 331 F.3d 1062, 1067 (9th Cir. 2003).

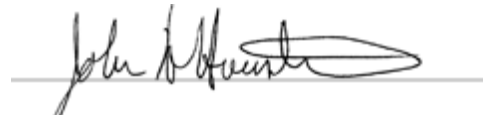
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**CONCLUSION AND ORDER**

For the reasons set forth above, **IT IS HEREBY ORDERED** that:

1. The findings and conclusions of the magistrate judge presented in the report and recommendation [doc. # 12] and the amended report and recommendation [doc. # 17] are **ADOPTED** in their entirety;
2. The instant petition is **DENIED** in its entirety.
3. The Clerk of Court shall enter judgment in accordance with this Order.

Dated: September 3, 2008

  
JOHN A. HOUSTON  
United States District Judge